

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3567 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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SHRAMDEEP COOP. HSG. SOCIETY THROUGH CHIEF ORGANISER

Versus

STATE OF GUJARAT THROUGH SECRETARY

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR DN PATEL, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/01/99

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner-Sharamdeep Co-operative Housing Society Ltd. (Proposed) (hereinafter referred to as "the petitioner") has prayed for a writ of mandamus to direct the respondent-State of Gujarat and its officers to give physical possession of the parcel of land described in the order dated 29.10.1991 at Annexure "A" to the petition, which land was allotted to the petitioner under Section 23 of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act"), or any other parcel of land of the same value and

situation of which the total price at the then prevailing market rate has been collected to the tune of Rs.13,85,063/- on 4.5.1991. The petitioner has also prayed for grant of interest at the rate of 24 per cent from the date of payment (4.5.1991) till the date of delivery of possession of the land.

2. The petitioner-Society consists of 20 members. The petitioner had applied for allotment of about 2100 sq.mtrs. of land to 20 members of the petitioner-society. The petitioner had applied for allotment of the following parcels of land in village Nana Mava within the Rajkot Urban Agglomeration :

Survey No. Plot No. Area in Sq.mtrs.

74 14, 682.80

19 641.95

73-75 48, 252.08

74 452.05

70 Paiki 21 98.95

2100.04

The aforesaid parcels of land were from out of the parcels of land declared as excess vacant land under the provisions of the Act and, therefore, under Section 23 of the Act, the State Government allotted the aforesaid parcels of land to the petitioner as per order dated 29.10.1991 of the Revenue Department of the State Government at Annexure "A" to the petition. The price of all the parcels of land taken together and admeasuring in the aggregate to 2100.04 sq.mtrs. was computed at the rate of Rs. 685/-, 650/- and 625/- per sq.mtrs for the land out of Survey Nos. 74, 73-75 and 7- paiki respectively. The price accordingly worked out to Rs.13,85,063/-. The petitioner paid the said price to the Government as per the challan No. 136 dated 4.5.1991 with the State Bank of Saurashtra, Rajkot. A photostat copy of the said challan is produced at Annexure "B" to the petition. The petitioner's grievance is that inspite of the aforesaid allotment order and the payment of price by the petitioner to the State Government, the physical possession of the lands in question is not allotted to the petitioner and, therefore, the present petition with the aforesaid prayers is filed.

3. The petition was admitted on 10.5.1996. No affidavit in reply has been filed, but at the last hearing of the petition on 17.12.1998, this Court had directed the Competent Authority & Deputy Collector

(ULC), Rajkot, respondent No. 2 herein, to personally remain present or to depute some responsible officer conversant with the facts of the case to remain present before this Court.

4. Mr DN Patel, learned AGP appearing for the respondents has stated that site inspection reveals that the area of plot Nos. 14 and 19 in Survey No. 74 has been reduced on account of provision required to be made for ring road in the Rajkot Urban Agglomeration. As far as plot Nos. 48 and 74 in Survey No. 73-75 are concerned, the original land holder had preferred an appeal before the Urban Land Tribunal and the Urban Land Tribunal had directed exclusion of the said two plots i.e. Plot Nos. 48 and 74 in Survey No.73-75 from out of the excess vacant land. The State Government had challenged the said decision of the Tribunal, but the said petition (Special Civil Application No. 253 of 1996) came to be dismissed by this Court on 7.12.1998. As far as plot No. 21 in Survey No. 70 Paiki admeasuring 97.95 sq.mtrs. is concerned, the said land is lying open. The learned AGP is, however, not in a position to state as to exactly how much area of land is available after making deductions for the ring road from out of plot Nos. 14 and 19. In any view of the matter, in view of exclusion of plot Nos. 48 and 74 as aforesaid and reduction in the area of plot Nos. 14 and 19, it is obvious that the respondents are now not in a position to allot the entire land admeasuring 2100.04 sq.mtrs. which was earlier ordered to be allotted as per the order dated 29.10.1991.

5. Hence, in view of the aforesaid facts and circumstances, it would be just and proper to issue the following directions :-

- (i) Whatever land which still remains with the respondents out of plot Nos. 14 and 19 in Survey No. 74 and plot No. 21 in Survey No. 70 Paiki in the Rajkot Urban Agglomeration shall be handed over to the petitioner. In case the petitioner is not in a position to utilize the said land on account of the reduced size or area so as to comply with the building regulations of the concerned local authority, the petitioner shall intimate to respondent No. 2 herein within one month from today. The petitioner-Society shall also be at liberty to apply to respondent Nos. 1 and 2 for allotment of other parcel/s of land in the Rajkot Urban Agglomeration so as to provide housing site to all the 20 members of the

petitioner-society. Such an application shall be made within one month from today.

(ii) Upon receipt of such intimation/application, the respondents shall take appropriate decision within one month from the date of receipt of the intimation/application to ensure that the members of the petitioner-society who have already contributed sizeable amounts as far back as in 1991 are provided with the land for housing at the earliest.

6. At this stage Mr Lakhani, learned counsel for the petitioner submits that since the petitioner had deposited the full amount of Rs.13,85,063/- for the said parcels of land which may be allotted to the petitioner, the price should be fixed as on 4.5.1991 when the petitioner had paid the aforesaid amount. Mr Patel for the respondents, however, opposes the said request and submits that the price will have to be fixed as on the date of fresh allotment.

7. Looking to the fact that the petitioner had paid the full amount of Rs.13,85,063/- to the State Government as far back as on 4.5.1991 and that the respondents have not handed over possession of any parcel of land till now, it would be just and proper to direct the respondents to charge the petitioner the price of land as on 4.5.1991 because the members of the petitioner-society have neither got possession of the land nor have they received any interest on the amount paid by them to the Government on 4.5.1991. The petition is accordingly allowed to the aforesaid extent and in terms of the aforesaid directions.

Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

January 19, 1997 (M.S. Shah, J.)

sundar/-